



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172837

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 18, 2016, at Barron, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for genetic testing.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], M.D.

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.

2. The petitioner with Children's Hospital and Clinics of Minnesota requested genetic testing for primary ciliary dyskinesia on January 18, 2016. The department denied the request on February 9, 2016.
3. The petitioner is a two-year-old girl with a history of pectus excavatum, bronchiolitis, adenoidal hypertrophy, and ear infections.
4. The petitioner has not had nasal nitric oxide testing.
5. The petitioner's request does not specify the results of a bronchoscopy and a ciliary mucosal biopsy that had been scheduled.
6. Current genetic testing detects disease-causing mutations in no more than 50-65% of the people suspected of having primary ciliary dyskinesia. The consensus medical opinion is that those who receive positive results from genetic testing should have more testing done to confirm the results.

DISCUSSION

The petitioner is a two-year-old girl who has had a number of childhood illnesses of unknown origin. These include pectus excavatum, bronchiolitis, adenoidal hypertrophy, and ear infections. Children's Hospital requests authorization to determine if she has primary ciliary dyskinesia. The department denied her request because the test probably will not lead to a clinically useful course of treatment.

When deciding whether to approve request, the department must consider the general prior authorization criteria found at Wis. Admin. Code, § DHS 107.02(3), including whether the request is medically necessary. To be considered medically necessary, a medical assistance service must meet the following criteria:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and ...
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The provider has the burden of proving that the requested service is necessary. Wis. Admin. Code, § DHS 107.02(3)(d)6.

The department's guidelines allow genetic testing when the test's results specifically allow medical providers to

develop a clinically useful approach or course of treatment or to cease unnecessary treatments or monitoring. Clinically useful tests allow providers to treat current symptoms significantly affecting a member's health or to manage the treatable progression of an established disease.

ForwardHealth Update, No. 2014-37. See also *Medicaid Online Provider Handbook*, Topic 16957.

The department determined that genetic testing would not lead to a clinically useful course of treatment because medical literature indicates that this type of testing detects disease-causing mutations in no more than 50-65% of the people suspected of having primary ciliary dyskinesia. Thus, up to half of the people receiving genetic for primary ciliary dyskinesia who actually have the disease will not get a positive result. This means that if the disease is suspected and a negative test is returned the person should continue to be treated as if she has the disease.

In addition, the Department states that the consensus medical opinion is that those who receive positive results from genetic testing should have more testing done to confirm the results. Thus, a positive test does not conclusively indicate that the person has primary ciliary dyskinesia. Related to this, the department pointed out that petitioner has not had nasal nitric oxide testing and that the documentation with her request does not specify the results of a bronchoscopy and a ciliary mucosal biopsy that had been scheduled. These are cheaper, more cost-effective means of testing the petitioner that should be performed or reported before more expensive genetic testing is done.

Based upon the evidence before me, I find that the petitioner has proved by the preponderance of the evidence that she is entitled to genetic testing. In making this decision I point out that genetic testing is an ongoing process. Soon, it is likely its costs will decline and its predictions will become more accurate. This will have an effect on when the department approves these procedures. Children's Health should work with the department to ensure that the testing protocols are up to date because, although the administrative law judges in the Division of Hearings and Appeals review the department's decisions, the judges are not doctors or scientists, so they generally defer to the department's expertise on the broader questions concerning a field of medical knowledge.

CONCLUSIONS OF LAW

The department correctly denied the requested genetic testing because the petitioner has not proved by preponderance of the credible evidence that it is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of May, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 26, 2016.

Division of Health Care Access and Accountability